

# Seattle Community Police Commission

Our City. Our Safety. Our Police. **Better Together.**

March 13, 2014

VIA EMAIL

Merrick Bobb  
Federal Monitor

J. Michael Diaz  
U.S. Department of Justice

Peter Holmes  
Seattle City Attorney

## **RE: CPC Recommendations Related to the Policy Manual of the Office of Professional Accountability**

Dear Monitor and Parties:

The Community Police Commission (CPC) is charged to complete by March 14, 2014 its recommendations related to the Policy Manual of the Office of Professional Accountability (OPA). The recommendations, approved at the CPC's March 12, 2014 meeting, are attached (Exhibit A). These are primarily policy recommendations, some of which should be incorporated into the Office of Professional Accountability (OPA) Policy Manual.

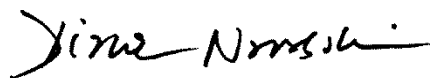
At upcoming meetings, the CPC is expected to vote on additional recommendations for improvements to SPD's accountability system, including practices that support transparency and access, as well as structural revisions. Please note that all approved recommendations are contingent on the CPC's ultimate recommendations about structure; the recommendations in Exhibit A that refer to "OPA" should be understood to apply to OPA or to its successor organization responsible for investigating police misconduct.

The CPC requests that all policies and protocols revised pursuant to its recommendations be provided by SPD in draft form for Commission review and comment prior to finalization.

Sincerely,



Lisa Dugaard, Co-Chair  
Community Police Commission



Diane Narasaki, Co-Chair  
Community Police Commission

Cc:  
Mayor Ed Murray  
Interim Chief of Police Harry Bailey  
Seattle City Council  
Community Police Commission

## Exhibit A

### Accountability Recommendations

**Note: All approved recommendations are contingent on the CPC's ultimate recommendations about structure; the recommendations below that refer to "OPA" should be understood to apply to OPA or to its successor organization responsible for investigating police misconduct.**

#### **Recommendation 1**

*Because the public expects that the accountability system will address all relevant incidents, not just those where someone has filed a complaint, OPA's jurisdiction should encompass any incident or performance-related action involving an SPD employee where a thorough and unbiased internal investigation is needed to identify potential training issues, policy problems, risk exposure or possible misconduct, regardless of whether the subject files a complaint with OPA.*

*The SMC enabling ordinance for OPA should be amended to make this jurisdiction clear, including a formal routing process from City Claims and City Law Department to OPA, and SPD policies and procedures instituted for the integration of or referral from other internal investigation units such as Force Investigation, Use of Force Review Board, Traffic Collision Investigation Section and Firearms Review.*

#### **Recommendation 2**

*Because cases involving possible criminal conduct should be among the highest priority to ensure quality and timeliness, the language in the collective bargaining agreement (CBA) that requires OPA to refer these cases to other investigative units of SPD or outside of SPD (such as the Washington State Patrol) with no OPA involvement until the case is returned to OPA if criminal charges are not filed or after completion of any criminal prosecution, should be modified. To help ensure that both the criminal and the administrative investigations conducted in cases where an employee is alleged to have violated the law are as strong and timely as possible, while ensuring that prosecution of criminal cases not be jeopardized and that the rights of employees are protected, the OPA process should be changed to eliminate the prohibition of any involvement by OPA. This will allow for consultation and determination at the initiation of an investigation as to what approach will be most effective for the criminal investigation while also ensuring the strongest administrative investigation whenever possible. The OPA Director and criminal investigative lead should consult with the relevant prosecuting attorney in that initial determination if helpful. Both the criminal and the administrative investigative file should indicate when Garritized statements were taken, if they were, so if the issue is later raised the record is clear. Criminal investigators would not question named employees with regard to the administrative allegations. These cases should be tolled\* while the criminal investigation is active, if there is not an administrative investigation underway. If the case file does not indicate that the criminal investigation was continuously active, any tolling may later be challenged as exceeding the 180-day period permitted under the CBA. Additionally, If OPA has had substantive involvement in the criminal investigation, the case would not be tolled. \*Tolling means that the clock on the time period allowed for the complaint investigation (180 days) is stopped.*

The intent of this recommendation is to ensure that both the criminal and the administrative investigations conducted in cases where an employee is alleged to have violated the law are as strong and timely as possible, while ensuring that prosecution of criminal cases not be jeopardized and that the rights of

employees are protected. Currently, if the investigation by the criminal investigators is not thorough or timely, often OPA has limited options once the case is transferred back to them. Sometimes evidence is no longer available, witnesses' memories have faded after months have passed or there is very limited time left in the required 180-day time limit. This change would allow the OPA Director and the lead for the criminal investigation to consult, seek input from the prosecuting attorney, and determine at the initiation of an investigation what approach will best lead to these objectives. For example, in some cases the preferred approach might be parallel administrative and criminal investigations, in other cases it might be that OPA would provide questions to be asked as part of the criminal investigation or in some cases it might be best for OPA to wait until further criminal investigation is done, but OPA might have the responsibility of managing the schedule to ensure timeliness.

### **Recommendation 3**

*"Training Referral" should not be a finding but an education-based disciplinary option once a finding has been Sustained. An allegation would be determined to be either Unfounded, Lawful & Proper, Inconclusive or Sustained. If Sustained, then training could be directed in lieu of traditional discipline. For those cases where either it was not the fault of the employee or in addition to the employee's actions there were other causes for what occurred outside of the chain of command, a determination of "Department Management, Policy or Training Failure: Correction Required" should be made. At that point the case should be bifurcated and this aspect classified as "Management Action" {MA-1234 rather than IS-1234 or SA-1234}, the OPA Director should recommend the required follow-up by the Department, which could include change to training, policy or practices, and/or coaching for the involved employee (as was done under the "Training Referral" finding), the file routed to the Chief, and the Department would have 30 days to respond. The OPA Director and Auditor would review the response for completeness and timeliness as occurs with Supervisor Action cases.*

### **Recommendation 4**

*SPD's professionalism policy should be modified to more clearly articulate expectations consistent with enhanced community trust and legitimacy; to emphasize listening, explaining, being empathetic, treating people with dignity and respect; that community care-taking is at times the focus, not command and control; and to be clear that the guiding principle is to treat the public with respect and courtesy, guarding against employing an officious or overbearing attitude and refraining from language, demeanor and actions that may result in the individual feeling belittled, ridiculed, or intimidated. The policy should also make clear that unnecessary escalation, as determined from the perspective of a reasonable officer, will be considered unprofessional. (De-escalation is now covered in the Use of Force policy; this would address those instances where reportable force is not ultimately used.)*

### **Recommendation 5**

*SPD's professionalism policy should be modified to include a Conduct Unbecoming policy (CUBO), making it clear that officers shall not, whether on or off duty, exhibit any conduct which discredits the Department or otherwise diminishes the public trust or the ability of officers or the Department to provide law enforcement services to the community. Because an officer's ability to perform his or her duties is dependent upon the respect and confidence communities have for the officer and law enforcement officers in general, officers must conduct themselves in a manner consistent with the integrity and trustworthiness expected of them by*

*the public. SPD should consult with the Law Department in the drafting of this policy so that it complies with relevant case law.*

#### **Recommendation 6**

*SPD's professionalism policy with regard to derogatory language should be modified to cover all members of the public rather than list protected classes.*

#### **Recommendation 7**

*To help ensure timeliness, there should be enforceable time limits on those steps that follow the completion of an OPA investigation, such as the length of time allowed to hold the internal command staff discipline review meeting, to notify the employee of the proposed findings and discipline, for the employee and his or her union to request a Loudermill hearing, for the Chief to issue his or her final disciplinary decision, for the employee to file an appeal and for the appellate hearing to occur.*

#### **Recommendation 8**

*To help strengthen SPD's internal accountability culture by allowing for policy violations to be quickly acknowledged, to focus investigative resources most efficiently, and to minimize the length of time for which an employee has a misconduct allegation pending, OPA should have a rapid adjudication process for certain types of alleged misconduct. The employee, upon realizing he or she violated Department policy, could immediately request an opportunity to admit to OPA the misconduct, using a predetermined form that also details the discipline that would be imposed. A discipline matrix would be used; the employee would waive his or her right for an investigative process, Loudermill Hearing and any appeal. The employee's file and OPA records would indicate the finding was "Sustained-Rapid Adjudication", so as to make clear the employee chose to quickly acknowledge the violation. The discipline would be the same for a case resolved through rapid adjudication as would be imposed after a full investigation.*

The types of violations for which rapid adjudication could be used would include allegations such as failure to obtain a secondary work permit, failure to use In-Car Video, failure to complete required annual training, failure to complete Use of Force supervisory review in 72 hours where the discipline to be imposed would not be greater than oral or written reprimand or up to one-day without pay.

#### **Recommendation 9**

*As a way to be more responsive to the public for those complaints filed where a swifter problem-solving response would better address the underlying concern rather than using an investigative process, mediation that usually takes several weeks or months to schedule, or a supervisor referral that takes up to 30 days, OPA should establish a more informal problem-solving process for certain types of complaints that can be more satisfactorily resolved with a more immediate and flexible approach. The complainant would still have the right to request the traditional OPA process if preferred.*

The types of violations for which the problem-solving option could be used would include those of a "customer service" nature. Determination as to appropriateness of this approach for a complaint would be made by the OPA Director and Auditor at the time of complaint classification (as is currently done with mediation referrals).

#### **Recommendation 10**

*OPA should have administrative subpoena power to compel the production of evidence not within the City or Department's control and non-employee interviews (as the Seattle Ethics and Elections Office has).*

#### **Recommendation 11**

*The Department and City officials should have a system to ensure responsiveness and/or follow through on OPA Director, Auditor, CPC, OPARB or other oversight recommendations. The Mayor's performance contract with the Chief and the quarterly updates to the City Council by the Chief, Mayor's Office and the City Attorney should include progress on accountability recommendations. Within 30 days of receiving an oversight report, the Department should issue a response to the issuing entity and all those to whom the report was officially submitted as required by ordinance that articulates which recommendations it agrees with, by when they will be implemented and who is responsible for their implementation, as well as which recommendations it disagrees with and why. Regular progress updates should follow.*

#### **Recommendation 12**

*There should be a negotiated and pre-determined protocol for handling investigations for cases where an allegation is made against OPA staff that presents a conflict of interest such that a non-OPA investigator and/or a non-OPA reviewer is required.*

#### **Recommendation 13**

*The Department's planned precinct liaison program should be done with one or more civilians in OPA, called "Precinct Liaison Officers", rather than a Lieutenant at each precinct. An OPA civilian staff member has specific skills in performance management and related areas that can best provide additional support to supervisors responsible for mentoring and disciplining officers.*

#### **Recommendation 14**

*The Department should institute a protocol to ensure regular review of criminal and civil litigation, FTO observations, training observations, cases declined by prosecutor/City Attorney, and OPA cases, to improve training, hiring or policies based on lessons learned.*

#### **Recommendation 15**

*The Department should adopt preference points in hiring for candidates who are multi-lingual or have work experience or educational background reflective of the types of skills needed in policing today, such as social workers, mental health or domestic violence counselors, Peace Corps, AmeriCorps or other verified equivalent work experience or community service.*

*Note: The workgroup also asked the Law Department to advise as to whether there is a way to reflect the potential value of urban residency through preference points, or some other method, for consideration as a possible additional recommendation.*

#### **Recommendation 16**

*The Department should discontinue the practice of “Extended Authority Commissions” that permits retired officers to act with all the authorities of a law enforcement officer, in uniform with duty weapon. Under current practice, they are not required to take the annual trainings required of active duty officers and because the City ordinance that authorizes this role for retired officers specifically deems them not employees of the City, accountability to the public for misconduct or poor performance is unclear at best.*

#### **Recommendation 17**

*The Department should create an internal, civilian office for the management and oversight of secondary employment work, where no relationships exist between those authorizing the work and those being assigned the work or those authorizing the work and the private businesses, rather than have off-duty work assigned by an office run by the Guild, direct contracting between a business and officers, private companies run by officers and other means.*

#### **Recommendation 18**

*The Department should revise the In-Car Video (ICV) review policy (based on a ULP settlement) to allow for a more robust use of ICVs by supervisors, command and training staff to help with coaching of best practices and to highlight great work.*

#### **Recommendation 19**

*A body camera pilot program has been authorized by the City Council and use of body cameras is often proposed as an accountability mechanism. Prior to moving forward with any body camera program, and as quickly as possible, the Department and the City should develop, with appropriate external input, policies for their use that balance privacy and accountability and securing whatever statutory authority the City believes is needed.*

#### **Recommendation 20**

*The Department should retain holding cell video for 90 days rather than 60 days (the current practice).*

#### **Recommendation 21**

*So that officers who violate the law or engage in serious misconduct are not able to be employed in a sworn capacity anywhere else, the City should work with the State Legislature, the Washington State Criminal Justice Commission (WSCJTC) and others to broaden the grounds for revocation of officer certification and to allow the WSCJTC to initiate the process to revoke certification once there is a final finding instead of having to wait until after a termination is final – meaning all administrative appeals are done, including civil service and arbitration. So, if the arbitrator affirms that the officer committed the act of misconduct (lying and committing crimes) but does not uphold the termination, the WSCJTC can still revoke certification.*

All police officers must obtain and maintain certification as peace officers. In Washington State, that is done through the Washington State Criminal Justice Training Commission (WSCJTC). RCW [43.101.010](#) limits when the WSCJTC can revoke officer certification to the following:

(7) A peace officer is "convicted" at the time a plea of guilty has been accepted, or a verdict of guilty or finding of guilt has been filed, notwithstanding the pendency of any future proceedings, including but not limited to sentencing, post-trial or post fact-finding motions and appeals. "Conviction" includes a deferral of sentence and also includes the equivalent disposition by a court in a jurisdiction other than the state of Washington.

(8) "Discharged for disqualifying misconduct" means terminated from employment for: (a) conviction of (i) any crime committed under color of authority as a peace officer, (ii) any crime involving dishonesty or false statement within the meaning of Evidence Rule 609(a), (iii) the unlawful use or possession of a controlled substance, or (iv) any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law; (b) conduct that would constitute any of the crimes addressed in (a) of this subsection; or (c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination.

Additionally, under 43.101.105, the WSCJTC cannot initiate the process to revoke certification until after a termination is final – meaning all administrative appeals are done, including civil service and arbitration. If an arbitrator or civil service commission orders reinstatement, then the termination is not considered final and the WSCJTC cannot act.

#### **Recommendation 22**

*Any process related to OPA cases that occurs after cases have been certified and closed by the Director (such as appeals, grievances or settlements), must be consistent with the values and principles adopted by the CPC for the accountability system. Any proposals to modify the system must be reviewed and approved by the CPC before being finalized.*

#### **Recommendation 23**

*There should only be a one appellate avenue for disciplinary appeals.*

#### **Recommendation 24**

*Any issues related to the investigative or disciplinary process that suggest a practice, procedure or approach could be improved and are raised due to a grievance or appeal should be discussed with the OPA Director so that necessary improvements can be made for future cases.*

#### **Recommendation 25**

*All SPD and OPA materials describing the OPA process should include a description of the possible appellate review.*

#### **Recommendation 26**

*All SPD and OPA reports describing results of investigations, including monthly, quarterly and annual case and statistical summaries, should include changes made to dispositions as the result of any appeals or grievances.*

**Recommendation 27**

*Communications with complainants should be open and transparent about whether a case has been challenged, and provide information about the appellate process.*

**Recommendation 28**

*The OPA Auditor should be notified when any appeal or grievance has been filed, when any hearing is scheduled, and have an opportunity to give input to the Director and CAO.*

**Recommendation 29**

*The OPA Auditor should be provided a quarterly report of cases being challenged by appeal or grievance, the nature of the challenge, the status of the case and any other information requested by the Auditor.*

**Recommendation 30**

*The City Attorney's Office should assess past arbitrator rulings with regard to disciplinary appeals from SPD to determine whether the standards for arbitral review of SPD termination and disciplinary decisions for officers who have committed misconduct comport with a robust accountability system and, if not, propose ways for the City to improve that aspect of accountability.*